



Pope, David L.

From: Barfield, Dave
Sent: Wednesday, May 19, 2004 2:24 PM
To: 'Michael Kube'; Marvin Swanda
Cc: Pope, David L.; Rolfs, Lee; Austin, George; Ross, Scott; Branscum, Iona; kbid@courtlund.net
Subject: Republican River water right information

Mike and Marv,

In our discussions subsequent to the public meeting regarding the Lower Republican River Appraisal Study, the Bureau requested clarification of water rights issues related to expanded use of Republican River water that might be enabled by alternatives being considered in that study process. Input was requested on three separate issues: a) existing rights of the Kansas Bostwick Irrigation District No. 2 (KBID) to use water from an expanded Lovewell storage capacity, b) conditions that would be attached to any new water rights to use water from Lovewell, and c) general information on the Water Reservation Right in Milford Reservoir. Below is a summary of each issue.

Current KBID water rights for Lovewell Reservoir

KBID currently has two water rights which involve the diversion of water into Lovewell Reservoir, subsequent storage of water in Lovewell Reservoir, and diversion of water from Lovewell Reservoir for irrigation purposes.

First, KBID has the right to divert and use of water from the Republican River in Nebraska. That right, Water Right, File No. 385, authorizes KBID to divert a maximum of 102,521 acre-feet of water per calendar year at a rate not to exceed 700 cubic feet per second (cfs) for irrigation. The right has a priority date of July 16, 1948.

Second, Kansas Bostwick holds Water Right, File No. 4673, which authorizes diversion of a maximum of 19,700 acre-feet of water per calendar year a maximum rate of 635 cfs from White Rock Creek. This right has a priority date of October 7, 1955, and includes 41,690 acre-feet of authorized storage.

Any change of the type of beneficial use of this water from irrigation to some other type of use would require approval of an application for a change in type of use, but the water right would retain its same priority date.

New Water Rights

Use of water for any type of use in excess of the quantities or rates set forth above will require the approval of a new application to appropriate water for beneficial use. Such a permit would hold a priority date as of the date the application is filed and as such it would be subject to administration to prevent impairment to water rights senior to that permit.

New appropriations from surface water of the Republican River are specifically governed by Kansas Administrative Regulation K.A.R. 5-3-11(d)(6) which provides in part:

III." A. Each application to appropriate surface water for direct diversion from the Lower Republican River Basin, and its tributaries within the Lower Republican River Basin, shall be approved if it does not impair existing water rights nor prejudicially and unreasonably affect the public interest. No new permits to appropriate water shall be issued for appropriations that will be primarily dependent on surface water return flows from the Bostwick irrigation district.

B. Every application to appropriate surface water for direct diversion which is approved by the chief engineer shall be subject to the following conditions:

The approval of application or water right for direct diversion of surface water shall not be exercised if:

1. Exercising the approval of application or water right causes impairment of senior water rights or senior approvals of applications.
2. The Kansas Water Office has requested that junior water rights be administered to meet the minimum desirable stream flow rates at the gage at Clay Center on the Lower Republican River;
3. The proposed point of diversion is above the Concordia minimum desirable stream flow gage and the Kansas Water Office has requested that junior water rights be administered to meet the minimum desirable streamflows at Concordia; or
4. The Chief Engineer is enforcing the terms of paragraph 6(b) of the Milford Water Reservation Right, identified as File No. 22,197-AR-6.

C. Applications to appropriate surface water from tributaries to the mainstem of the Lower Republican by means of dams may be approved only if the approval will not result in impairment of existing rights, nor prejudicially or unreasonably affect the public interest. Any dam permitted on an ephemeral stream shall meet the requirements of K.A.R. 5-40-1 et seq. and be equipped with a controlled outlet with a minimum diameter of four inches. Any dam permitted on an intermittent or perennial stream shall be equipped with a controlled outlet with a minimum diameter of four inches. The controlled outlet shall be placed to allow water to pass through the dam at or near streambed elevation."

In the event that it becomes necessary to obtain new appropriations for water being stored in Lovewell Reservoir or any other proposed structure, the above criteria in Paragraph A must be met in order for the application to be approved and the conditions set forth in Paragraphs B and C would be placed on the approval of the application.

Milford Water Reservation Right

The Water Reservation Right to Divert and Store Water in Milford Reservoir under Authority of the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., has a priority date of April 3, 1974, and is denominated as File No. 22,197-AR-6. The authorized point of diversion is the SW 1/4 SE 1/4 S17, T11S, R5E in Geary County, Kansas.

The State of Kansas, through the Kansas Water Office (KWO), is authorized to utilize 100 percent of the total storage space between elevations 1080.0 feet above MSL and 1144.4 feet MSL, which was 372,300 acre-feet of storage space in 1994. The KWO is currently authorized to market the yield of Milford Reservoir through a 2 percent drought, which was calculated in 1996 to be 124,381 acre-feet per year. If the reservoir is at or below elevation 1144.4 and at or above elevation 1140.0, any flows in excess of 50 cfs not needed to satisfy prior downstream rights may be stored. If the reservoir is below elevation 1140.0, it is deemed to be in a drought condition and all natural flows not needed to satisfy senior downstream rights may be stored under the Reservation Right. Water Reservation Rights are enforceable based on their priority dates against all water rights with a priority date junior to the water reservation right.

Please let me know if you need any further information.

David Barfield